

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators 1
Canada Postal Corporation—United States Postal Service
Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2014-3

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE CONCERNING RATE ADJUSTMENT
FOR CANADA POST NEGOTIATED SERVICE AGREEMENT

(December 3, 2013)

The Public Representative hereby provides comments pursuant to Order No. 1882.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's Notice of a Type 2 rate adjustment for inbound letter post entered pursuant to an additional Inbound Market Dominant Multi-Service Agreement.² The Notice concerns the inbound portion of a bilateral agreement with the Canada Post Corporation (Canada Post 2014 Agreement), which would set negotiated rates for inbound letter post. Notice at 1.

In Order No. 549, the Commission approved the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product, and included the Strategic Bilateral Agreement Between United States Postal Service and Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement) and the China Post Group—United States Postal Service Letter Post Bilateral Agreement (China Post

¹ PRC Order No. 1882, Notice and Order Concerning Canada Post Corporation Negotiated Service Agreement, November 19, 2013.

² Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 15, 2013 (herein "Notice").

2010 Agreement) within the product.³ Subsequently, the Commission determined that bilateral agreements with HongKong Post (HongKong Post Agreement) and China Post Group (China Post 2011 Agreement) should be included within the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product.⁴ More recently, the Commission approved the addition of bilateral agreements with Singapore Post Limited, Australian Postal Corporation, Korea Post and Royal Postnl to the product.⁵ In Order No. 1864, the Commission requested that the Postal Service put forth a proposal for identification of the appropriate baseline for comparison of agreements for functional equivalency purposes⁶.

The Postal Service states that the Canada Post 2014 Agreement is the substantive equivalent to the predecessor agreement with Canada Post, which was included within Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product grouping. Notice at 7. The Postal Service asserts that the Canada Post 2014 Agreement is functionally equivalent to the Canada Post 2012 Agreement included within the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product. *Id.* at 8. Consequently, the Postal Service proposes to include the Canada Post 2014 Agreement within the product. The Postal Service also asserts that the negotiated rates in the Canada Post 2014 Agreement result in

³ See PRC Order No. 549, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreement, Docket Nos. MC2010-35, R2010-5 and R2010-6, September 30, 2010.

⁴ See PRC Order No. 700, Order Approving Rate Adjustment for HongKong Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, Docket No. R2011-4, March 18, 2011; see also Order No. 871, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. R2011-7, September 23, 2011.

⁵ See PRC Order No. 995, Order Approving Rate Adjustment for Singapore Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, Docket No. R2012-1, November 23, 2011; PRC Order No. 996, Order Concerning Additional Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. R2012-2, November 23, 2011; PRC Order No. 1864, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Korea Post), Docket No. R2013-9, October 30, 2013 and PRC Order No. 1602, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Royal PostNL BV), Docket No. R2013-4, December 28, 2012.

⁶ Docket No. R2013-9, Order No. 1864, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Korea Post), October 30, 2013. In response, the Postal Service filed a motion for partial reconsideration. See Docket No. R2013-9, Motion of Partial Reconsideration of Order No. 1864, November 6, 2013.

“improvement over default rates established under the Universal Postal Union (UPU) Acts for inbound letter-post items.” *Id.* at 1. The negotiated rates are intended to become effective for the period beginning January 1, 2014, and ending December 31, 2015. Attachment 2 at 7-8.

COMMENTS

The Public Representative has reviewed the Canada Post 2014 Agreement and the supporting financial model filed under seal that accompanied the Postal Service’s Notice. Based upon that review, the Public Representative concludes that the Canada Post 2014 Agreement is likely to improve the net financial position of the Postal Service or otherwise enhance the operational performance of the Postal Service during the contract period. In addition, the Public Representative concludes that the Canada Post 2012 Agreement is an appropriate baseline for the Canada Post 2014 Agreement and that the two agreements are functionally equivalent.

Functional Equivalence. In Order No. 1864, the Commission requested that the Postal Service put forth a proposal for identification of the appropriate baseline for comparison of agreements for functional equivalency purposes. In its Notice, the Postal Service identifies the Canada Post 2012 Agreement as an appropriate baseline. The Postal Service asserts that in comparison with the Canada Post 2012 Agreement, cost characteristics and the financial models used to project costs and revenues are the same. *Id.* at 9. It states that while minor differences exist, they mostly reflect a reorganization of terms, but make no actual changes to the terms. *Id.* The Postal Service states that none of these differences detracts from the conclusion that the agreements are functionally equivalent. *Id.*

The Public Representative agrees. She concludes that the Canada Post 2012 Agreement is an appropriate baseline for the Canada Post 2014 Agreement. In comparing the two agreements, the Public Representative concludes that the differences in the presentation of the financial model and the text of the agreement do

not affect the basic methodology used in calculating financial results or the basic terms of the agreement that would alter a finding of functional equivalence.

Financial Improvement. Under 39 U.S.C. § 3622(c)(10), the criteria for the Commission's review are whether the agreement (1) improves the net financial position of the Postal Service or enhances the performance of operational functions, (2) will not cause unreasonable harm to the marketplace, and (3) will be available on public and reasonable terms to similarly situated mailers. With respect to criterion (1), the negotiated rates for inbound letter post items should result in improvement compared to the UPU terminal dues default rates. Based upon the negotiated rates, the financial model indicates that the Canada Post 2014 Agreement can be expected to improve the financial position of the Postal Service during the term of the agreement. With respect to criteria (2) and (3), the Postal Service makes reasonable arguments that they are not implicated by the inbound Canada Post 2014 Agreement. *Id.* at 4-6.

International Business Reply Service (IBRS). In its Notice, the Postal Service states that the Canada Post 2014 Agreement includes negotiated pricing and settlement for various inbound letter-post products, including International Business Reply Service. However, the agreement filed under seal does not include negotiated rates for IBRS. The Public Representative contacted Postal Service attorney Laree Martin, who explained that the Postal Service has not concluded its negotiations with Canada Post regarding the IBRS rates. While northbound IBRS is already in effect, southbound IBRS will only begin in April. The Postal Service plans to file the southbound IBRS rates with the Commission, once the negotiation of rates concludes.

Volume Estimates. In its financial model, the Postal Service makes volume projections for each category of mail in the agreement for the duration of the agreement. Some of the predicted changes for the contract period are rather large. The footnote in the Postal Service's workpapers indicates that the volume estimates are a "USPS Pricing Decision based on [a] volume projection study"; however the Postal Service provides no further explanation in its Notice nor its workpapers. Postal Service attorney Laree Martin clarified that the projections were based not on a study but rather on an analysis of volume trends. Adjustments were made to existing volumes for two

reasons. First, tracked packets volumes were adjusted because the existing volume reflects less than a full year and does not include peak season. Second, volumes were adjusted to reflect volume trends based on the Postal Service's expertise.

The Public Representative is concerned by the use of volume estimates. Different categories of mail within an agreement have different cost coverages. Inaccurate volume forecasts could make an agreement appear to improve the net financial position of the Postal Service if low cost coverage categories are weighted down and high cost coverage categories are weighted up. The Postal Service should refrain from using estimates. It should rely on existing volumes whenever possible. In the least, it should explain the source and the reason for the adjustments it makes.

The Public Representative concludes that the adjustments to the tracked packets volumes appear reasonable. Additionally, adjusting the volumes inputs in the financial model to reflect existing volumes does not change her conclusion that the agreement appears to improve the net financial position of the Postal Service.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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